

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

RICKY SMITH,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

CIVIL ACTION NO.: 5:19-cv-53

(Case No.: 5:10-cr-22)

ORDER

Movant Ricky Smith (“Smith”) filed this pro se 28 U.S.C. § 2255 Motion on June 28, 2019, attacking the sentence imposed in this Court on September 1, 2011, in Case Number 5:10-cr-22. Doc. 1. The Court appointed counsel, Ms. Amy Lee Copeland, to assist Smith in this matter. Case No. 5:10-cr-22 (“Crim. Case”), Docs. 98, 108. Ms. Copeland filed an Amended § 2255 Motion, clarifying Smith is now represented and setting forth the issues Smith presents: (1) whether Smith’s Armed Career Criminal Act (“ACCA”) enhancement was properly applied regarding Smith’s prior state court convictions for armed robbery and aggravated assault; and (2) whether this enhancement was properly applied regarding Smith’s Georgia conviction for burglary. Doc. 3. The Government filed a motion to dismiss Smith’s Amended § 2255 Motion, asserting Smith’s § 2255 Motion is untimely and this Court need not conduct an evidentiary hearing. Doc. 6.

In granting Smith’s application to file a second or successive § 2255 motion in this Court, the Eleventh Circuit Court of Appeals stated Smith’s prior burglary conviction qualifies as “an ACCA predicate.” Crim. Case, Doc. 97 at 8. Thus, the Court need not address this portion

further. However, the Eleventh Circuit noted it had not yet addressed whether Smith's prior Georgia convictions for aggravated assault and armed robbery qualify as ACCA predicate offenses. Id. While the Court will address Respondent's Motion to Dismiss, it would like to have the parties provide supplemental briefing in this case regarding whether this Court applied the ACCA enhancement based on Smith's prior convictions for aggravated assault and armed robbery through the ACCA's residual clause or another provision of that Act. In so doing, the parties are directed to provide any and all argument and supporting documents for the Court's consideration of this matter, including any documents from Smith's state court proceedings for his aggravated assault and armed robbery convictions. The Court **ORDERS** the Government to respond to this Order within 30 days, and Ms. Copeland shall have a 30-day period for response once the Government files its brief.

SO ORDERED, this 1st day of February, 2021.

A handwritten signature in blue ink, appearing to read 'B. Cheesbro', is written over a horizontal line.

BENJAMIN W. CHEESBRO
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA